

## Organ Donation and Priority Points in Israel

Quigley, Muireann; Wright, Linda; Ravitsky, Vardit

DOI:

[10.1097/TP.0b013e31824e3d95](https://doi.org/10.1097/TP.0b013e31824e3d95)

*Document Version*

Peer reviewed version

*Citation for published version (Harvard):*

Quigley, M, Wright, L & Ravitsky, V 2012, 'Organ Donation and Priority Points in Israel: An Ethical Analysis', *Transplantation*, vol. 93, no. 10, pp. 970-3. <https://doi.org/10.1097/TP.0b013e31824e3d95>

[Link to publication on Research at Birmingham portal](#)

### General rights

Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

- Users may freely distribute the URL that is used to identify this publication.
- Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
- User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
- Users may not further distribute the material nor use it for the purposes of commercial gain.

Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

### Take down policy

While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact [UBIRA@lists.bham.ac.uk](mailto:UBIRA@lists.bham.ac.uk) providing details and we will remove access to the work immediately and investigate.

## **Organ Donation & Priority Points in Israel**

### **An Ethical Analysis\***

#### **Abstract**

*Israel's rates of organ donation have been one of the lowest among developed countries. An attempt to change this has led to the introduction of a pioneering new law, the Organ Transplant Act 2008, which came into effect in January 2010 and sets out principles underlying a new policy in relation to the allocation of organs for transplantation. According to this policy, a person can gain priority points by signing a donor card, making a non-directed organ donation during their life, or as a result of a first degree relative signing a donor card or consenting to procurement of organs after death. In this opinion piece, we argue that while this approach merits attention for its innovative aspects and its potential benefits, it raises some ethical difficulties. In particular we discuss some problems of justice and fairness inherent in the system, focusing on inequalities due to the number of relatives one might have, due to the type of living donation one makes, the potential for strategic behaviour, and problems regarding the consent of family members.*

DOI: <https://doi.org/10.1097/TP.0b013e31824e3d95>

Israel's rates of organ donation have been one of the lowest among developed countries. It has achieved a consistently low rate of cadaveric donations over the last 10 years, reaching 9.8 pmp at its highest to 6.4 pmp at its lowest (1). These low rates should be understood on the backdrop of various cultural and religious concerns and beliefs held by some in the Jewish community.(2) Although organ donation is permitted and encouraged by all denominations of modern Judaism and is even considered a meritorious act (*mitzvah*) by the many influential rabbinical scholars today,(3) some still hold the erroneous opinion that Judaism objects to the definition of brain death. To fight against this perception, the Israeli donor card allows the donor to stipulate that a clergyman chosen by the family should give approval prior to retrieving organs. Others hold superstitious beliefs that consent to donation might invoke bad luck (an 'evil eye') and bring about premature death. Educational campaigns to counteract such beliefs have been carried out repeatedly, but with limited success. Consent for donation remains disturbingly low. Surveys carried out in Israel have shown that priority points would be the most effective

---

\* The authors would like to thank Anne-Maree Farrell, Margaret Brazier, Søren Holm, Brian Willis, Jacob Lavee, Meir Broder, Avraham Steinberg and Gali Ben Or for their comments on drafts of this manuscript. Muireann Quigley would like to acknowledge the stimulus provided by the Wellcome Trust Strategic Programme in the Human Body, its Scope, Limits and Future.

incentive to increase willingness to donate, compared – for example - with direct financial compensation.(4)

To examine ways of increasing organ donation, the Israeli National Transplant Council (INTC) established a committee of stakeholders and relevant experts to give recommendations. The committee included transplant physicians and coordinators, lawyers, philosophers, ethicists and representatives of the main religions. The discussions of the committee resulted in a new law, the Organ Transplant Act 2008, which governs a range of activities in relation to both deceased and living donation that came into effect in January 2010.(5) Within the new law, a pioneering priority point system is introduced, intended to motivate individuals to sign donor cards or to consent to donations of the organs of deceased first degree relatives. The latter is of great importance since the Israeli approach to organ donation is based on an opt-in system in which the consent of first-degree relatives is obtained in practice *even* when the deceased has signed a donor card.(6) While a variety of incentives for organ donation, including the allocation of bonus priority points, have been considered elsewhere (7-10), Israel is the first country to implement a system which incorporates these.<sup>1</sup> This recent implementation provides a timely opportunity to consider some ethical considerations arising from the new system.

The Israeli Act does not enshrine the details of a priority points system into statute but rather sets them out at a policy level.(11) Section 9(b)4 of the Act authorises the Steering Committee for the National Transplant Center to “draw up directives in the matter of the allocation of organs”.(5) When drawing up these directives, the Act stipulates that the Committee must take into account consent to post-mortem donation given during a person’s lifetime, actual deceased donations of first degree relatives, and undirected living donations.(5) It is on the basis of these statutory provisions that the new scheme has been devised based on a tiered system of priority that includes: *maximum priority*; *regular priority*, and *second priority*.(11) Maximum priority is granted to candidates if: (a) consent has been given for organ donation from a deceased first-degree relative or (b) they donated a kidney, a liver lobe, or a lung lobe in the course of their life to a non-specified recipient. Regular priority is granted to candidates who hold a donor card, i.e. those who have consented to donate their organs after their death. Second priority is granted to candidates with a first degree relative who holds a donor card, even if they do not hold a donor card themselves. The rationale behind this principle is that in the past, Israelis who signed a card have systematically consented to donate the organs of a first-degree relative after death, even if the deceased herself did not sign a card. We should note, however, that priority points are given for only *one* relative and cannot be accumulated if more than one relative has signed a donor card.

Hence, potential donors and their first degree relatives receive priority points should they need an organ. Those who already hold an organ donor card or who sign up for one prior to 31 December 2011 will be entitled to their

priority points after a waiting period of one year and those who sign up after that date will be eligible after a waiting period of three years.(12) In relation to living donation, those who direct their organ to a particular recipient receive no priority, whilst those who donate to an unspecified recipient receive maximum priority points should they ever need an organ. Points cannot be accumulated if an individual falls under more than one criterion. In such a case, the highest number of points obtained through any one criterion prevails. Thus the points system acts as a tie breaker in allocating an organ to patients of *equal* medical need.

Organs are generally considered a scarce societal resource. Justice and fairness require that those who are willing to accept an organ would be willing to donate one as well. The new Israeli priority point system rewards those who are willing to donate an organ with an increased chance of receiving one. (13) In doing so, it is meant to rectify what is perceived as the unfairness of 'free-riders' – those who refuse to donate for religious (or other) reasons, but yet are willing to receive an organ when they need one (13). However, a few elements of the new system raise ethical concerns. This paper describes these concerns and proposes ways to address them in order to improve the system.

### **Number of First-Degree Relatives**

Israel has a family refusal rate of 50.8%.(14) Attempting to improve this figure, the new priority points system allows first degree relatives to gain maximum priority points when they consent to the donation of a deceased relative's organs. However, this provision means that one's chances of obtaining priority points depend on how many first degree relatives a person has. Moreover, the new system gives second priority to first degree relatives of a potential donor (an individual who has signed a donor card). This potentially disadvantages those with fewer siblings. If a person has not signed a donor card, but has one or more siblings who have done so, they would receive priority points, whereas someone without siblings has no such safety net. As such, the system gives a comparative advantage to those who have (more) siblings, something which is beyond a person's control. This aspect of the allocation system thus involves an element of unfairness.

This unfairness is exacerbated by the fact that the more siblings one has, the greater the likelihood of finding a living donor, as there is more chance that one of the siblings will be a compatible match and a willing volunteer. Therefore, those with larger families may be less likely to need an organ from a deceased donor. Conversely, those with fewer potential living donors are the ones most likely to be in need of a deceased organ, but within the new system they are less likely to gain extra priority points based on the actions of their relatives.

One response to this concern is that regardless of the number of relatives a person has “anyone is welcome to sign their own donor card, thereby ensuring themselves priority in organ allocation.”(15) While this is undoubtedly true, it misses the ethical nub of the matter. The pertinent point is not whether individuals should benefit from their *own* good actions, i.e. signing their own donor card, but whether they should benefit from the good actions of *others* where they themselves have not signed a donor card.

### **Living Donors**

The new Israeli system treats directed living donors differently from those who donate to an unspecified recipient,(16) the former being excluded from receiving priority points. This is in stark contrast to some Western countries where the only people who are privileged in the allocation of organs are children and previous living kidney donors. For example, the United Network of Organ Sharing (UNOS) uses a points system for the allocation of kidneys where previous living kidney donors are awarded extra points.(17)

Directed living donors assume risk *during* their lifetime to aid another human being. In doing so they shorten the waiting list by one: they help not only their recipient, but everyone else waiting for an organ. Organ transplantation relies ever increasingly on living donors, yet the Israeli system treats previous living donors inequitably. Living donors have already put themselves at risk in donating an organ; a morally good act which benefits both the recipient and wider society. If we are to allocate organs based on previously demonstrated commitment to organ donation, it would seem that a directed living donation is more ‘deserving’ than someone who has taken no steps to complete a donor card, but whose relative has donated after death or signed a donor card. A signed donor card is at best an expression of intent, but is neither a morally nor a legally binding contract. Moreover, donation after death cannot be equated with the risk and inconvenience of live donation. Indeed, Lavee *et al* acknowledge that this element of the new system is unfair and state that an appeal is being prepared to reconsider this element because they “strongly believe all living donors should be granted prioritization in organ allocation”.(4)

### **The potential for strategic behaviour**

Within the context of deceased donation the incentive of priority points is offered not for the actual organs, but for the *promise* that they will be made available for transplantation after death. This introduces the potential for individuals to engage in strategic behaviour. People could join the Israeli register solely to guarantee priority points at a later date, whilst instructing their families to refuse donation in the event of their death and, thus, expressions of willingness to donate may not translate into actual donations.

The challenge of translating past expressions of support into actual donations is not necessarily new. Countries which operate organ donor registries where individuals have to opt-in also experience this obstacle. The ethical concern arises where those who express this willingness receive something in return; in this case priority points. The problem arises when individuals who never intended to donate after death are given preference over others when competing for scarce organs. It might be reasonable to assume that most people will not engage in this strategic behaviour. There is, however, the possibility that a minority might sign up intending to withdraw from the register at a later date. Since Israel is the first country to implement a priority points system, no empirical evidence exists to date and it is thus difficult to tell whether this will happen and to what extent. An assessment will be warranted to track changes in the numbers of organs donated and their causes.

Similar concerns may be raised regarding people in certain potentially adverse health states. A person with chronic Hepatitis C, knowing that they are at increased risk of liver failure, could join the organ donor register to secure a higher place on the waiting list should the need arise. Although it is possible that their other organs could be transplanted after death to another person with Hepatitis C (of the same viral genotype), due to the much reduced pool of possible recipients, it is an unlikely scenario. Thus, this would not result necessarily in any extra organs for transplantation. This appears to disadvantage others with similar medical needs, who had not taken strategic advantage of the system.

It may be argued that the way around this problem is to exclude those groups who are unlikely to ever contribute to the organ pool via a system of medical testing and certification of good health. However, such an approach presents pragmatic and ethical difficulties. Firstly, besides the cost of testing and certification, it might further deter people from joining the register due to the time and effort involved. Secondly, such a suggestion seems to present its own problem: people most likely to need a transplant due to a foreseeable health state would be the ones systematically disadvantaged because they would not have access to waiting list prioritisation enjoyed by those who are in good health. Thus, whether those individuals in adverse health states were permitted to participate in the system or not, there would appear to be ethical issues that need to be addressed.(18)

## **Consent**

Finally, we wish to draw attention to a potential problem regarding consent. The transplant community has valued voluntariness in organ donation as an expression of respect for the autonomy of individuals. Offering incentives, such as priority points, does not necessarily vitiate voluntariness. Instead, they could simply be seen as providing extra factors to consider when deciding

about organ donation. However, incentives to donate *one's own* organs are different from incentives to donate the organs of *others*. Therefore, the case where a person signs up to become an organ donor is to be contrasted with the situation where an individual's wishes were *unrecorded* and the family is asked to make the decision after death. In Israel there has never been a known case in which family members consented to organ procurement *against* the known wishes of the deceased. Prevailing cultural norms have hitherto underpinned the acceptance of individuals' wishes regarding the use of their organs postmortem as a part of their will and such wishes are not violated by family members.<sup>(19)</sup> Yet by offering extra priority points to first degree relatives of deceased donors, the new Israeli system gives families an incentive to donate a loved one's organs even if the deceased's wishes for donation are unknown or against donation. Consequently, giving the family extra motivation to donate raises questions regarding the primacy of individual autonomy in deceased donation

## Conclusion

Israel's new Organ Transplantation Act has enabled a unique system to be introduced in order to motivate individuals to donate their organs. Commendably, it goes some way to addressing the challenge posed by those who are willing to accept an organ, but are not willing to donate. Indeed, in 2011 Israel saw an unprecedented increase in consent for donations (from 49% to 55%, with a record number of 70,000 individuals signing donor cards) and in actual transplantations (an increase of 68%).<sup>(20)</sup> While the new system may not provide a comprehensive solution to the organ shortage in Israel, these data show that the campaign surrounding its introduction has already been successful in improving the situation. Some cultural barriers to donation that currently exist in Israeli society will still have to be addressed by additional campaigns and by an ongoing effort to educate the public, in particular by engaging religious authorities and guaranteeing their support and endorsement and by enhancing public trust in the healthcare system.<sup>(6)</sup>

Nonetheless, the law and the consequent organ donation policy raise some challenging ethical questions. Our own discussion indicates at least two possible changes which could be made. Firstly, since those who make a living donation to a specified person take on risk for the benefit of another during their lifetime, they ought to be brought within the purview of the scheme. This would reverse the current injustice by appropriately recognising their contribution. We would suggest that living donors ought to be given greater priority than those who sign a donor card which is at best only an expression of willingness; something which might not come to pass. Secondly, it is not clear to us why a person should benefit from the actions of their relatives rather than their own good deeds. Therefore, we would propose that the allocation of priority points be restricted and ought not to include first degree relatives. Such

changes would go some way in addressing the justice issues inherent in the new system which undermine its ethical integrity.

The principles underlying the priority points system as set out in the law resulted from the deliberations of a committee of experts (including ethics experts) that examined the relevant issues. However, when the recommendations of the committee were brought before the Labor, Welfare and Health Committee of the *Knesset* (the Israeli Parliament) that was responsible for preparing the law for a final vote, not all of them were accepted. For example, the original recommendations of the expert committee were to grant priority points only to holders of donor cards and not to their first degree relatives and to grant priority points to all live donors whether or not the recipients are identified. It is therefore possible that acceptance of expert opinion by the legislators could have prevented some of the ethical problems currently present within the points system.

**Table 1**

<b>Action</b>	<b>Points allocated – current system</b>	<b>Points allocated - improved system</b>
Signs donor card	Y	Y
Relative signs donor card	Y	N
Donate deceased relatives organs	Y	Controversial
Live donation – recipient not specified	Y	Y
Live donation – recipient specified (e.g. to child, spouse, etc.)	N	Y



---

## References

- <sup>1</sup> See <http://tpm.org/> for the latest figures. Last accessed 06 Sept 2011.
- <sup>2</sup> Feld J, Sherbin P and Cole E. Barriers to Organ Donation in the Jewish Community. *Journal of Transplant Coordination* 1998; 8(1): 19-24.
- <sup>3</sup> Steinberg A. Organ Transplantation and Definition of the Moment of Death – Jewish Perspectives. at <http://www.medethics.org.il/articles/Misc/transplantation.pdf> Accessed 27 Dec 2011. A comprehensive list of articles regarding Jewish perspectives on organ donation (many in English) can be found at: <http://www.hods.org/Hebrew/articlesH.asp> accessed 27 Dec 2011
- <sup>4</sup> Lavee J, Ashkenazi T, Gurman G, Steinberg D. A New Law for Allocation of Donor Organs in Israel. *Lancet* 2010; 375: 1131–33.
- <sup>5</sup> Organ Transplantation Law 5768-2008, Israeli book of laws. (English translation provided by the Israeli Ministry of Justice).
- <sup>6</sup> Guttman N, Ashkenazi T, Gesser-Edelsburg A and Seidmann V. Laypeople's Ethical Concerns about a New Israeli Organ Transplantation Prioritization Policy Aimed to Encourage Organ Donor Registration among the Public. *J Health Politi Policy Law* 2011, (26)4: 691-716.
- <sup>7</sup> Delmonico FL, Arnold R, Scheper-Hughes N et al. Ethical Incentives-not Payment-for Organ Donation. *N Eng J Med* 2002;346:2002-2005.
- <sup>8</sup> Israni A, Halpern S, Zink S et al. Incentive Models to Increase Living Kidney Donation. *Am J Transplant* 2005; 5:15-20.
- <sup>9</sup> Gubernatis, G, Kliemt, H. A Superior Approach to Organ Allocation and Donation. *Transplantation* 2000; 70(4): 699 – 707.
- <sup>10</sup> Veatch, RM. Bonus Allocation Points for Those Willing to Donate Organs. *The American Journal of Bioethics* 2004; 4(4): 1-3.
- <sup>11</sup> Directives of the Steering Committee of the Transplantation Center based on the Organ Transplantation Law, published 24 March 2011 in the Official Governmental Publications Collection (*Yalkut Ha-Pirsumim*) Vol. 6216: 3282-3287, at: <http://www.justice.gov.il/NR/rdonlyres/EF3D9055-295C-4152-89C3-ADADBCC0C5D8/26789/6216.pdf> Last accessed 22 Jan 2012. An English summary of the policy can be found at <http://www.kartisadi.org.il/eng/rights.html>. Last accessed 06 Sept 2011.
- <sup>12</sup> The Jerusalem Post. Registered donors to get preference if they need organ. 11/15/2010. Available at <http://www.jpost.com/HealthAndSci-Tech/Health/Article.aspx?ID=195354&R=R1>. Last accessed 06 Sept 2011.
- <sup>13</sup> Lavee J, Ashkenazi T, Gurman G, Steinberg D. A New Law for Allocation of Donor Organs in Israel. *Lancet* 2010; 375: 1131–33.

---

<sup>14</sup> Council of Europe, *Newsletter Transplant* 16(1), p. 46. Available at [http://www.edqm.eu/medias/fichiers/Newsletter\\_Transplant\\_Vol\\_16\\_No\\_1\\_Sept\\_2011.pdf](http://www.edqm.eu/medias/fichiers/Newsletter_Transplant_Vol_16_No_1_Sept_2011.pdf). Last accessed 11 Nov 2011.

<sup>15</sup> Lavee J, Ashkenazi T, Steinberg D. A New law for Allocation of Donor organs in Israel: Author's Reply. *Lancet* 2010; 376: 231 - 232.

<sup>16</sup> Wright L. Silva DS. Incentives for organ donation: Israel's novel approach. *Lancet* 2010 375: 1233 – 1234.

<sup>17</sup> United Network for Organ Sharing. Allocation of deceased kidneys. [http://www.unos.org/PoliciesandBylaws2/policies/pdfs/policy\\_7.pdf](http://www.unos.org/PoliciesandBylaws2/policies/pdfs/policy_7.pdf) See section 3.5.5.2 Last accessed 06 Sept 2011.

<sup>18</sup> Quigley, M. Incentivising Organ Donation. In Farrell, A.M., Price, D., Quigley, M. *Organ Shortage: Ethics Law and Pragmatism*. Cambridge University Press 2011.

<sup>19</sup> Lavee, J., personal communication, January 2012.

<sup>20</sup> See official numbers released by the Israeli Ministry of Health at: [http://www.health.gov.il/Subjects/Organ\\_transplant/News/Pages/2011\\_summary.aspx](http://www.health.gov.il/Subjects/Organ_transplant/News/Pages/2011_summary.aspx) Last accessed 22 Jan 2012. See also media coverage at <http://www.ynetnews.com/articles/0,7340,L-4080956,00.html> Last accessed 22 Jan 2012.

